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In re Application of : DECISION UNDER
Luthje et al. :
Application No.: 09/937,996 :
Filing Date: 28 September 2001 : 37 CFR 1.78
Attorney Docket No.: 02572 :
For: Steering Device For Vehicles :

This is in response to applicant's "Petition For Acceptance Of Unintentionally Delayed Priority Claim" filed on 30 August 2004, which is being treated under 37 C.F.R. 1.78.

BACKGROUND

On 30 March 2000, applicants filed international application PCT/EP00/02839, which claimed a priority date of 01 April 1999. A copy of the international application was communicated to the USPTO from the International Bureau on 12 October 2000. A Demand electing the United States was filed prior to the elapse of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired on 01 October 2001.

On 28 September 2001, applicant filed the instant application, in which processing under 35 U.S.C. 111(a) was appropriate, as described in the Communication mailed on 08 October 2003.

DISCUSSION

37 CFR 1.78(a)(2) applies to nonprovisional applications which were filed on or after November 29, 2000. A petition under 37 CFR 1.78(a)(3) is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In the present case, the later filed application under 35 U.S.C. 111(a) was filed on 28 September 2001 and the petition was filed after the time period specified in 37 CFR 1.78(a)(2)(ii).

37 CFR 1.78(a)(3) states:

3) If the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section is presented in a nonprovisional application after the time period provided by paragraph (a)(2)(ii) of this section, the claim under 35 U.S.C. 120, 121 or 365(c) for the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America may be accepted if the reference identifying the prior-filed application by application number or international application number and international filing date was unintentionally

delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed application must be accompanied by:

- (I) The reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section to the prior-filed application, unless previously submitted;
- (ii) The surcharge set forth in §§ 1.17(t); and
- (iii) A statement that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of this section and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

Requirement (1) has not been satisfied because the reference to the prior filed application included in the "Second Preliminary Amendment" filed on 09 January 2004 does not explicitly state whether the instant application is a continuation, continuation-in-part, or divisional application of the international application.

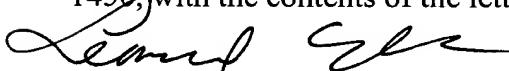
Requirements (2) and (3) have been satisfied for the following reasons. The required reference to the prior filed application was included in the "Second Preliminary Amendment" filed on 09 January 2004. The fee has been paid. The petition states that "the entire delay in filing between the date the claim was due and the date the claim was filed was unintentional."

CONCLUSION

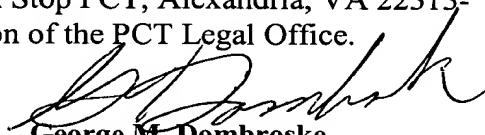
For the reasons above, the petition under 37 CFR 1.78(a)(3) is **DISMISSED**, without prejudice.

If reconsideration on the merits of this matter is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are available.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, P.O. Box 1450, Mail Stop PCT, Alexandria, VA 22313-1450, with the contents of the letter marked to the attention of the PCT Legal Office.



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